ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2004

Ms. Jo Thomason
Atchley, Russell, Waldrop & Hlavinka, L.L.P.
P.O. Box 5517
Texarkana, Texas 75505-5517

OR2004-6220

Dear Ms. Thomason:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 205234.

The Texarkana Children's Advocacy Center and CASA of Northeast Texas (collectively "CASA"), which you represent, each received a request for several categories of information, including lists of volunteers and board members, social economic information, quarterly reports, minutes of meetings and newsletters for CASA. You state that you have provided the requestor with some of the requested information. Further, you state that CASA has no information responsive to a portion of the request.[1] You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted information.

---

[1] The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

[2] We note that although you also raise sections 552.103, 552.107, 552.111, 552.117, and 552.135, you provide no arguments explaining why these sections apply to the submitted information. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Consequently, we find that CASA has waived its claims under these sections. *See* Gov't Code §552.302. In addition, although you list section 552.305 of the Government Code as a pertinent exception, section 552.305 does not provide an exception to required public disclosure but provides a procedure for notifying third parties whose proprietary interests may be at issue. Thus CASA may not withhold any of the submitted information under section 552.305. *See* Gov't Code §§ 552.301, 552.305.

You claim that the identities of the CASA volunteers are excepted from disclosure pursuant to section 264.610 of the Family Code, which provides that "[t]he attorney general may not disclose information gained through reports, collected case data, or inspections that would identify a person working at or receiving services from a volunteer advocate program." Fam. Code §264.610. The information at issue is not contained in reports or other materials collected by the attorney general as part of his statutory duties under chapter 264 of the Family Code. Rather, this information was created by CASA for its own purposes. Accordingly, we find that section 264.610 of the Family Code is not applicable to the requested records. *See generally* Open Records Decision Nos. 658 (1998), 478 (1987) (stating that statutory confidentiality must be express and will not be implied from statutory scheme).

Section 552.101 also encompasses information made confidential by constitutional law or judicial decision. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an advocacy organization's list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

> Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). "'[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.'" *Id.*

Bay Area Citizens, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that "the burden must be light." *Id.* at 376. Quoting the United State Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* Such proof may include "specific evidence of past or present harassment of

members due to their associational ties, or of harassment directed against the organization itself." *Id.*

Considering the representations made to this office, the supporting information submitted, and the totality of the circumstances, we find that disclosure of the identities of contributors to CASA in this instance will burden First Amendment rights of freedom of association. We believe the term "contributor" encompasses both the identities of those individuals and corporations who make financial donations to CASA, and volunteers who donate their time and services to CASA. *Id.* Therefore, to the extent that the submitted information identifies contributors to CASA, it must be withheld under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. We note that the term "contributor" does not encompass members of CASA's governing board. *See* Gov't Code § 552.022(a)(2).

Section 552.102(a) excepts "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" This exception is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the test of common-law privacy under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Therefore, we will consider your section 552.102 claim in the context of the doctrine of common-law privacy under section 552.101 of the Government Code.

Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation. See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private). Having carefully reviewed the submitted information, we have marked a portion of it that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information may be withheld on this basis.

In summary, to the extent that the submitted information identifies contributors to CASA, it must be withheld under section 552.101 pursuant to the right of association, unless the contributors have waived their right of association. CASA must also withhold the

information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Lauren E. Kleine

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 205234

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.
2205 Avenue I, #117
Rosenberg, Texas 77471
(w/o enclosures)